

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.790 OF 2005

IN

APPEAL FROM ORDER NO.814 OF 2004

Mukesh Chhabidas Parekh & anr.

...Applicants

vs.

Harish Keshav Menon & Anr.

...Respondents

CORAM: A.S.OKA,J.

DATE : JUNE 17,2005.

P.C.:

1. This Application is filed by the Applicants who are the Respondents in the Appeal from Order. While disposing of the Appeal from Order, the Respondents have been appointed as the Agents of the Court Receiver subject to the payment of royalty at the rate of Rs.3500/- p.m. By this Application a prayer is made for appointing the Applicant No.2 as an Agent of the Court Receiver on the ground that the Applicant No.2 is in a position to pay Rs.5000/- p.m. as royalty.

2. While deciding the Appeal in paragraph No. 19 of the Judgment, this Court has noted that the Applicant No.2 offered to pay Rs.2000/- p.m. as a royalty. At the same time the Respondents offered to pay Rs.3000/- p.m. as royalty. This Court therefore fixed the royalty amount at Rs.3500/- and appointed the Respondents as agents of the Court Receiver. By this Application it is sought to be contended that the offer of Rs.2000/- which is recorded in the Judgment was given by

the Advocate for the Applicants without taking instructions from the Applicants and the said offer was on the basis of instructions given by the Advocate appearing for the Applicants in the Trial Court.

3. The prayer made in this Application cannot be accepted for more than one reason. The Advocate for the Applicants has not disclosed at the time of passing the order in the Appeal from Order that the offer of Rs.2000/- was being made without consulting the Applicant No.2. Secondly, the finding is already recorded that nothing is placed on record to show that the Applicant No.2 was in possession. It is held that the Applicant No.2 has not even filed an Affidavit on record of the Trial Court asserting that any point of time he was put in possession. Hence, no case is made out for modification of the order passed in Appeal from Order. Application is therefore rejected.

4. At this stage the Advocate for the Applicants prays that the Judgment and Order passed in the Appeal from Order may be stayed for a reasonable time. The said prayer is opposed by the learned Counsel appearing for the Respondents. Considering the facts and circumstances of the case, the the directions given by Judgment and Order delivered in Appeal from Order will not be implemented till 29th July 2005. It is made clear that no further extension will be granted.

JUDGE.